

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

NORMAM SWATZELL

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888

**DEFENDANTS**

NCO FINANCIAL SYSTEMS, INC

County of Residence of First Listed Defendant \_\_\_\_\_

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known) \_\_\_\_\_

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RS1 (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692  
 Brief description of cause:  
 Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ \_\_\_\_\_

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

Explanation:

4/8/11

DATE

SIGNATURE OF ATTORNEY OF RECORD

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 235 Eum, Tallula, IL 62688

Address of Defendant: 507 Prudential Road, Harsham, PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge: \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. 1692  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

## ARBITRATION CERTIFICATION

(Check Appropriate Category)

Craig Thor Kimmel, counsel of record do hereby certify:  
☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;  
☐ Relief other than monetary damages is sought.

DATE: 4/8/11 Craig Thor Kimmel 57108  
 Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/8/11 Craig Thor Kimmel 57108  
 Attorney-at-Law Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Norman Swatzell

CIVIL ACTION

v.

NCO Financial Systems, Inc.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

4/8/11  
Date

Craig Thor Kimmel  
Attorney-at-law

Norman Swatzell  
Attorney for

215-540-8888

877-788-2864

Kimmel@creditlaw.com

Telephone

FAX Number

E-Mail Address

## PLAINTIFF'S COMPLAINT

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

2 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.

3 **PARTIES**

4 6. Plaintiff is a natural person residing in Tallula, Illinois 62688.

5 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

6 8. Defendant is a national debt collection company with its corporate headquarters  
7 located at 507 Prudential Road in Horsham, Pennsylvania, 19044.

8 9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6),  
9 and repeatedly contacted Plaintiff in an attempt to collect a debt.

10 10. Defendant acted through its agents, employees, officers, members, directors,  
11 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

12 **PRELIMINARY STATEMENT**

13 11. The Fair Debt Collection Practices Act (“FDCPA”) is a comprehensive statute,  
14 which prohibits a catalog of activities in connection with the collection of debts by third parties.  
15 See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that  
16 violates its provisions, and establishes general standards of debt collector conduct, defines abuse,  
17 and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the  
18 FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and  
19 misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or  
20 unconscionable conduct, both generally and in a specific list of disapproved practices.

21 12. In particular, the FDCPA broadly enumerates several practices considered  
22 contrary to its stated purpose, and forbids debt collectors from taking such action. The  
23 substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not  
24 engage in any conduct the natural consequence of which is to harass, oppress, or abuse any  
25

1 person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt  
2 collector may not use any false, deceptive, or misleading representation or means in connection  
3 with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use  
4 unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. § 1692f.  
5 The FDCPA is designed to protect consumers from unscrupulous collectors, whether or not there  
6 exists a valid debt, broadly prohibits unfair or unconscionable collection methods, conduct which  
7 harasses, oppresses or abuses any debtor, and any false, deceptive or misleading statements in  
8 connection with the collection of a debt.

9 13. In enacting the FDCPA, the United States Congress found that “[t]here is  
10 abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many  
11 debt collectors,” which “contribute to the number of personal bankruptcies, to marital instability,  
12 to the loss of jobs, and to invasions of individual privacy.” 15 U.S.C. § 1692a. Congress  
13 additionally found existing laws and procedures for redressing debt collection injuries to be  
14 inadequate to protect consumers. 15 U.S.C. § 1692b.

15 14. Congress enacted the FDCPA to regulate the collection of consumer debts by debt  
16 collectors. The express purposes of the FDCPA are to “eliminate abusive debt collection  
17 practices by debt collectors, to insure that debt collectors who refrain from using abusive debt  
18 collection practices are not competitively disadvantaged, and to promote consistent State action  
19 to protect consumers against debt collection abuses.” 15 U.S.C. § 1692e.

#### 20 **FACTUAL ALLEGATIONS**

21 15. At all relevant times, Defendant was attempting to collect an alleged consumer  
22 debt from Plaintiff.

23 16. The alleged debt at issue arose out of transactions, which were primarily for  
24 personal, family, or household purposes.  
25

1           17. Beginning in or around July 2009 and continuing until May 2010, Defendant  
2 made continuous and repeated telephone calls to Plaintiff in its attempts to collect a consumer  
3 debt.

4           18. Plaintiff received phone calls and voicemail messages from the following phone  
5 number: (888) 876-3995, which the undersigned has confirmed is Defendant's telephone  
6 number.

7           19. Defendant called Plaintiff's cellular telephone number almost everyday causing  
8 him to receive, at times, more than twenty (20) collection calls a month.  
9

10          20. Also, at times, Defendant would contact Plaintiff twice a day.

11          21. Further, Defendant called Plaintiff's cellular telephone without regard to the time  
12 of day or his location, and as a result, Plaintiff received debt collection calls from Defendant  
13 while he was at work, a place where it was inconvenient for him to receive debt collection calls.

14          22. Most recently, Defendant contacted Plaintiff on May 30, 2010, at 7:14 a.m. and  
15 7:56 a.m., times which were inconvenient for Plaintiff to receive debt collection calls.

16          23. In its voicemail messages to Plaintiff, Defendant claimed that "this is a very  
17 important phone call," alarming Plaintiff and making him believe that the call was regarding ma  
18 matter more important than a debt collection phone call.

19          24. When Plaintiff did speak with Defendant, Defendant threatened Plaintiff that an  
20 attorney would be taking him to court.  
21

22          25. To date, Defendant has not taken any legal action against Plaintiff, and no  
23 attorney has taken Plaintiff to Court regarding this alleged debt.

24          26. Finally, upon information and belief, when contacting Plaintiff on his cellular  
25 telephone, Defendant used an automatic telephone dialing system or pre-recorded or artificial



1 voice.

2 27. Plaintiff did not expressly consent to Defendant's placement of telephone calls to  
3 his cellular telephone by the use of an automatic telephone dialing system or a pre-recorded or  
4 artificial voice prior to Defendant calling his cellular telephone.

5 28. Moreover, none of Defendant's telephone calls placed to Plaintiff were for  
6 "emergency purposes," as specified in 47 U.S.C. §227(b)(1)(A).

7 29. Within five days of its initial communication, Defendant failed to send Plaintiff  
8 written notification of his rights to dispute the debt and/or request verification of the debt.

9 30. To date, Plaintiff has not received any correspondence from Defendant setting  
10 forth his rights to dispute the debt and/or request verification of the debt.

11 31. Defendant's actions in attempting to collect the alleged debt were harassing,  
12 abusive and highly deceptive.

13  
14 **CONSTRUCTION OF THE APPLICABLE LAW**  
15 **THE FAIR DEBT COLLECTION PRACTICES ACT**

16 32. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay &  
17 Durand, 103 F.3d 1232 (5th Cir. 1997). "Because the Act imposes strict liability, a consumer  
18 need not show intentional conduct by the debt collector to be entitled to damages." Russell v.  
19 Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233  
20 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector's legal status  
21 violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

22 33. The FDCPA is a remedial statute, and therefore must be construed liberally in  
23 favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The  
24 remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit  
25 & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). "Because the FDCPA, like the



1 Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be  
 2 construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir.  
 3 2002).

4 34. The FDCPA is to be interpreted in accordance with the “least sophisticated”  
 5 consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano  
 6 v. Harrison, 950 F. 2d 107 (3<sup>rd</sup> Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc.,  
 7 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for  
 8 the public - that vast multitude which includes the ignorant, the unthinking, and the credulous,  
 9 and the fact that a false statement may be obviously false to those who are trained and  
 10 experienced does not change its character, nor take away its power to deceive others less  
 11 experienced.” Id. The least sophisticated consumer standard serves a dual purpose in that it  
 12 ensures protection of all consumers, even naive and trusting, against deceptive collection  
 13 practices, and protects collectors against liability for bizarre or idiosyncratic interpretations of  
 14 collection notices. Clomon, 988 F. 2d at 1318.

#### 16 CONSTRUCTION OF THE LAW 17 THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

18 35. In 1991, Congress enacted the TCPA, in response to a growing number of  
 19 consumer complaints regarding certain telemarketing practices.

20 36. The TCPA regulates, among other things, the use of automated telephone  
 21 equipment, or “autodialers.” Specifically, the plain language of section 227(b)(1)(A)(iii)  
 22 prohibits the use of autodialers to make any call to a wireless number in the absence of an  
 23 emergency or the prior express consent of the called party.

24 37. According to findings by the Federal Communication Commission (“FCC”), the  
 25 agency Congress vested with authority to issue regulations implementing the TCPA, such calls

1 are prohibited because, as Congress found, automated or prerecorded telephone calls are a  
2 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly  
3 and inconvenient. The FCC also recognized that wireless customers are charged for incoming  
4 calls whether they pay in advance or after the minutes are used.

5 38. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed  
6 that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of  
7 a creditor) are permitted only if the calls are made with the "prior express consent" of the called  
8 party. The FCC "emphasize[d] that prior express consent is deemed to be granted only if the  
9 wireless number was provided by the consumer to the creditor, and that such number was  
10 provided during the transaction that resulted in the debt owed."

12 **COUNT I**  
13 **DEFENDANT VIOLATED THE**  
14 **FAIR DEBT COLLECTION PRACTICES ACT**

15 39. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or  
16 more of the following ways:

- 17 a. Defendant violated of the FDCPA generally;
- 18 b. Defendant violated §1692c(a)(1) of the FDCPA when it contacted the  
19 Plaintiff at an unusual time or place or a time and place known or should be  
20 known to be inconvenient to the Plaintiff in connection with the collection of  
21 a debt; specifically in the absence of knowledge of circumstances to the  
22 contrary, a debt collector shall assume that the convenient time for  
23 communicating with a consumer is after 8 o'clock antemeridian and before 9  
24 o'clock postmeridian, local time at the consumer's location;
- 25 c. Defendant violated §1692d of the FDCPA by harassing Plaintiff in

1 connection with the collection of an alleged debt;

2 d. Defendant violated §1692d(5) of the FDCPA, when it caused the Plaintiff's  
3 telephone to ring repeatedly or continuously with the intent to harass, annoy  
4 or abuse Plaintiff;

5 e. Defendant violated §1692e of the FDCPA by using false, deceptive, or  
6 misleading representations or means in connection with the collection of a  
7 debt;

8 f. Defendant violated §1692e(5) of the FDCPA by threatening to take action  
9 that cannot legally be taken or that is not intended to be taken;

10 g. Defendant violated §1692e(10) of the FDCPA by using false representations  
11 or deceptive means to collect or attempt to collect a debt;

12 h. Defendant violated §1692f of the FDCPA by using unfair and unconscionable  
13 means with Plaintiff to collect or attempt to collect a debt;

14 i. Defendant violated §1692g of the FDCPA by failing to send written  
15 notification, within five (5) days after its initial communication with Plaintiff,  
16 advising Plaintiff of his rights to dispute the debt or request verification of the  
17 debt; and  
18

19 j. Defendant acted in an otherwise deceptive, unfair and unconscionable manner  
20 and failed to comply with the FDCPA.  
21

22 **COUNT II**  
23 **DEFENDANT VIOLATED THE TELEPHONE CONSUMER PROTECTION ACT**

24 40. Plaintiff hereby incorporates all facts and allegations specified in all preceding  
25 paragraphs, by reference as if fully set forth at length.

1           41.     Section 227(b)(3)(A) of the Act authorizes a private cause of action for a person  
2 or entity to bring in an appropriate court of that state "an action based on a violation of this  
3 subsection or the regulations prescribed under this subsection to enjoin such violation."

4           42.     Section 227(b)(3)(B), of the Act authorizes a private cause of action for a person  
5 or entity to bring in an appropriate court of that state "an action to recover for actual monetary  
6 loss from such a violation, or to receive \$500 in damages for each such violation, whichever is  
7 greater."

8           43.     Defendant repeatedly placed calls to Plaintiff's cellular telephone almost  
9 everyday, causing Plaintiff to receive, at times, more than two (2) collection calls a day and at  
10 times, more than twenty (20) collection calls a month.

11           45.     Defendant's conduct violated § 227(b)(1)(A)(iii) of the TCPA by making any call  
12 using any automatic telephone dialing system or an artificial prerecorded voice to any telephone  
13 number assigned to a paging service, cellular telephone service, specialized mobile radio service,  
14 or other radio common carrier service, or any service for which the called party is charged for the  
15 call.

16           46.     The Act also authorizes the Court, in its discretion, to award up to three (3) times  
17 the actual damages sustained for violations.

18           WHEREFORE, Plaintiff, NORMAN SWATZELL, respectfully prays for a judgment as  
19 follows:

- 20           a.     Declaratory judgment that Defendants conduct violated the FDCPA and  
21                 TCPA;  
22           b.     Actual damages;  
23           d.     Statutory damages;  
24           e.     Costs and reasonable attorney's fees; and  
25           f.     Any other relief deemed appropriate by this Honorable Court.

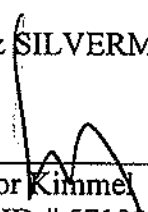
**DEMAND FOR JURY TRIAL**

PLEASE TAKE NOTICE that Plaintiff, NORMAN SWATZELL, demands a jury trial in this case.

DATED: 4/8/11

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

By:   
Craig Thor Kimmel  
Attorney ID # 57100  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
Phone: (215) 540-8888  
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